

MEMORANDUM OF LEASE

CERTIFICATES OF TITLE BEING LEASED

That portion of the land comprised in Certificate of Title Register Book Volume 6160 Folio 22 situated at Lot 5, 95 Samuel Road Nuriootpa SA 5355 and being the area hatched and delineated in bold black pen in the plan attached hereto in Annexure A [**premises**]

ESTATE AND INTEREST

In fee simple

ENCUMBRANCES

Mortgage No. 12125788 to Westpac Banking Corporation

LESSOR (full name and address)

MANCAVE HOLDINGS PTY LTD ACN 166 753 448 of PO Box 764 Tanunda SA 5352

LESSEE (full name, address and mode of holding)

ADVANCED VITICULTURE AND MANAGEMENT PTY LTD ACN 102 259 076 of PO Box 476 Nuriootpa SA 5355

TERM OF LEASE

TERM OF TWO (2) YEARS

COMMENCING ON 1 July 2022

AND

EXPIRING ON 30th JUne2024

With a right to renew for the extended terms in clause 2.20 and Schedule VIII

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

A rental of **TWO HUNDRED AND THIRTY FOUR THOUSAND THREE HUNDRED AND EIGHTY NINE DOLLARS AND EIGHTY EIGHT CENTS** (\$234,389.88) plus Goods & Services Tax ["GST"] per annum payable calendar monthly in advance in the sum of **NINETEEN THOUSAND FIVE HUNDRED AND THIRTY TWO DOLLARS AND FORTY NINE CENTS** (\$19,532.49) plus GST with:

1. the rental to be paid by the **Lessee** monthly in advance on a 7 day account basis; and
2. the rental is to be subject to review and adjustment as provided for in Special Condition 1

OPERATIVE CLAUSE ^(a)delete the inapplicable

The Lessor LEASES TO THE LESSEE the land ^(a)ABOVE / HEREINAFTER described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed ^(a) herein / ~~in Memorandum No~~ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASMENT(S) ETC.

Not applicable

**IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)**

COVENANTS OF LEASE

1. The Lessee hereby acknowledges covenants and agrees with the lessor as follows:

**CONDITION
AND USE
OF PREMISES**

1.1 That the lessee is completely familiar with the premises as they exist and is acquainted with all wants of reparation and defects and has relied on his own judgment expertise and the lessee's experts in deciding that the premises hereby leased are suitable for the lessee's purposes. The lessee further acknowledges that the lessor has given no warranty as to the use to which the premises may be put and the lessee has satisfied himself thereon and shall be deemed to have accepted this lease with full knowledge of, and subject to, any prohibitions or restrictions on the use thereof under or in pursuance of any Act Ordinance Regulation By-Law or other statutory enactment or order of Court. Should the use be permissible only with the consent of any authority the lessee shall obtain such consent at the lessee's own cost and expense.
THE LESSEE ACKNOWLEDGES THAT THE LESSOR DOES NOT WARRANT THAT THE PREMISES ARE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS THE LESSEE INTENDS TO CARRY ON AT THE PREMISES.

**USE OF
PREMISES**

1.2 Not without the consent in writing of the lessor first had and obtained use permit or suffer to be used the premises or any part thereof for any business or purpose other than as set out in schedule 1 hereto ("**Permitted Use**").

**RESIDENTIAL
USE NOT
PERMITTED**

1.3 That the premises or any part or parts thereof shall under no circumstances be used as a residence or for residential purposes unless such use shall be specifically mentioned in Schedule 1 hereto.

**NO DANGEROUS
OR OFFENSIVE
TRADES**

1.4 Not to carry on or permit or suffer to be carried on any dangerous noisy noxious or offensive trade or business in or upon the premises or permit or suffer the premises or any part thereof to be used for any illegal or immoral purpose or do permit or suffer to be done or permitted on or in the vicinity of the premises any act or thing whatsoever which may reasonably become an annoyance nuisance or disturbance to the owners or occupiers of any adjoining adjacent or nearby premises but excluding any act which forms part of the ordinary course of business of lessee under the Permitted Use.

**HOARDINGS
AND SIGNS**

1.5 Not to erect nor permit or suffer to be erected any advertisements hoardings or signs on the exterior of the premises or in the interior thereof so as to be visible from the exterior of the premises without the previous consent in writing of the lessor first had and obtained which consent shall not be unreasonably or capriciously withheld.

**LESSOR'S
PLANT AND
EQUIPMENT**

1.6 At all times during the term to keep all the lessor's plant and equipment in or upon the premises including those items details of which are set out in Schedule IX hereto clean and in good working order condition and repair, fair wear and tear excepted. The lessee when requested by the lessor whether that be at the time of yielding up possession of the premises or during the term hereof shall replace by an equivalent article of equal value and like nature (or pay to the lessor the replacement value thereof) any article of the lessors said plant and equipment that shall be lost broken or damaged during the term, fair wear and tear excepted. It is the intention of the parties that the lessee shall be responsible for all the lessor's said plant and equipment and shall be responsible for the proper servicing and maintenance thereof and reparation of all breakdowns relating thereto including the replacement of any plant or equipment should that prove necessary but that nothing in this obligation extends to require the lessee to undertake any repairs or maintenance arising from fair wear and tear, or capital or structural repairs and maintenance.

Where reasonably required by the lessor, the lessee at the lessee's cost shall engage suitably qualified service repair and maintenance contractors approved of by the lessor (acting reasonably) to properly service and maintain the lessor's plant and equipment.

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|---|------|---|
| <u>NO REMOVAL OR DISFIGUREMENT OF LESSOR'S BELONGINGS</u> | 1.7 | Not to remove or permit or suffer to be removed or to be defaced or disfigured any of the lessor's fixtures or fittings plant or equipment which are in upon or attached to the premises without the previous consent in writing of the lessor in each instance first had and obtained nor permit or suffered to be defaced or disfigured the premises or any part or parts thereof. |
| <u>KEEP IN GOOD REPAIR</u> | 1.8 | At the lessee's own cost and expense at all times during the term to repair amend paint glaze clean and maintain and keep in good order condition and repair (fair wear and tear only excepted) the premises including all water pipes sinks plumbing and drains locks fasteners and other fixtures and fittings belonging to or connected with the premises but excluding capital or structural repairs except if the need for such repairs were occasioned directly or indirectly due to either the willful or negligent act or omission of the lessee or of those persons for whose actions the lessee is responsible or as a result direct or indirect of the business trade profession or occupation carried on by the lessee and the lessee shall at the expiration or other sooner determination of the term deliver up to the lessor the premises and all such erections improvements and fixtures in good order condition and repair as herein provided. For the purposes of this clause "good order condition and repair" means the same condition as applicable at the commencement date of this Lease. |
| <u>PAINTING</u> | 1.9 | That the lessee shall at the lessee's own cost and expense in all things well and sufficiently repair rub down paint varnish (or appropriately treat as the case may require) in good quality paints (or with other good quality treatments as the case may be) and colours to be approved by the lessor (acting reasonably) and in a good and workmanlike manner and by a duly licensed tradesman the premises after all surfaces have been made good by the lessee at the times set out in Schedule IV hereto and when the lessee vacates the premises whenever that may be. Any other matters set out in Schedule IV hereto shall be deemed to be added to this clause and where inconsistent with any part of this clause the terms of Schedule IV shall prevail. |
| <u>NOTICE OF DAMAGE</u> | 1.10 | To give the lessor prompt notice of any damage to or defects in the premises or any part thereof or the lessor's plant and equipment. |
| <u>ALTERATIONS CONSENT NECESSARY</u> | 1.11 | Not without the consent in writing of the lessor first had and obtained make any alteration or additions to the premises nor install or alter any partitioning nor install or place any heavy equipment fixtures fittings or machinery likely to disturb the efficient operation of the premises or the air conditioning thereof or other system servicing the building or the premises. In seeking the lessor's approval to a proposed alteration addition or installation the lessee shall submit plans and specifications of the proposed work. The lessor may require as a condition of its approval that any such work shall be supervised by a person nominated by the lessor and that the lessee shall obtain from all or any competent authority all necessary approvals or permits necessary to enable such proposed work to be lawfully effected and the lessee shall on request of the lessor produce for inspection to the lessor copies of any such approvals and/or permits from any such competent authority or authorities as may be called for; and all alterations additions or improvements so made in accordance with the provisions of this lease shall be in good taste and in harmony with the existing erections buildings and improvements including colour schemes so made by the lessee with or without the consent of the lessor shall if the lessor so requires at the expiration or other sooner determination of the term be removed and made good by the lessee at the cost in all things of the lessee and to the reasonable satisfaction of the lessor. |
| <u>LESSOR'S REASONABLE DIRECTIONS</u> | 1.12 | Where the lessee is or becomes entitled to or is obliged to carry out any alterations additions repairs or other works on the premises and/or the lessor's plant and equipment |

the lessee shall comply with all reasonable directions given by the lessor his servants or agents in respect thereof provided that this clause shall not authorise the lessee to make any alterations, additions repairs or other works to the premises or the lessor's said plant and equipment without first obtaining consent in writing thereof from the lessor. Unless otherwise agreed in writing the cost of all or any such alterations additions repairs or maintenance shall be borne and paid for by the lessee.

LAWFUL
REQUIREMENTS

- 1.13 From time to time and at all times during the term at the lessee's cost and expense in all things the lessee will comply with all statutes ordinances proclamations orders or regulations present or future affecting or relating to the premises or their use including all or any requirements which may be made or notices or orders which may be given by any governmental semi-governmental court, licensing authority, municipal health or any other authority having jurisdiction or authority in respect of the premises or the use thereof and the lessee will keep the lessor indemnified in relation to and in respect of all such matters. In particular, the lessee shall at the lessee's cost comply with all requirements of any Department of Health (State or Federal) Fire Brigade Authority, Local Council, Department of Labour and Industry, Liquor Licensing Authority or Court (if applicable); and any Licensing or other authorities particularly concerned with the trade, business, profession or occupation that the lessee conducts on the premises. The lessee, however, shall not be responsible for any structural improvements or repairs except if same were required directly or indirectly due to either the willful or negligent act or omission of the lessee or of those persons for whose actions the lessee is responsible or as a result direct or indirect of the business, trade, profession or occupation carried on or in the premises by the lessee. Any structural changes required to be made to the premises pursuant to this clause shall be at the lessor's cost and expense unless such changes arise due to the lessee's use of the premises.

STAFF AND
CUSTOMER
REQUIREMENTS

- 1.14 That the lessee will provide at the lessee's cost and expense all legally obligatory amenities and facilities required in the premises for the staff employed on the premises by the lessee and for the customer's invitees servants and agents of the lessee. The lessor remains liable for providing all legally obligatory amenities and facilities to all common areas.

TELEPHONE
SERVICE GAS,
ELECTRICITY ETC

- 1.15 That the lessee will punctually pay and discharge all Telecom charges for telephone installation, repair, rental and use and all accounts for any electricity, gas and excess water used or consumed in or on the premises. Where the lessee installs a telephone service then when the lessee vacates the premises, the lessee will remove all telephone service equipment and if requested, to sign and hand over to the lessor a transfer of the telephone service cabling to the lessor or as the lessor may reasonably direct. This clause does not entitle the lessor to acquire the telephone number or numbers of the lessee.

LESSEE'S
PROPORTION
SHARE

- 1.16 Where there is no separate metering in regard to any of the matters set out in sub-clause 1.15 above; or where the lessee has to bear a proportional share of the cost or expense of any other matter or thing relating to the premises, the land on which the premises are situated or any other matter or thing incidental thereto or to this lease the lessee shall pay the percentage set out in Schedule V of the whole of any such expense or cost (herein after called "the lessee's proportional share").

DUTY TO KEEP
CLEAN
GARDEN CARE

- 1.17 At all times during the term to keep the premises and any paths lanes and roadways leading thereto in a clean tidy and sanitary condition free from all accumulation of rubbish and weeds to the reasonable satisfaction of the lessor and to keep all drains sinks and sewers and all sanitary and other water apparatus in upon or connected with the premise clean and clear and in good working order condition and repair; and to properly water fertilise and cultivate all lawns and plants on the premises and on the land under the lessee's care. The parties acknowledged that the obligation contained in this clause is limited to the areas marked on the plan attached, being those areas immediately adjoining the premises.

- REFUSE BINS
GLASS
CLEANING
- 1.18 At all times to keep all refuse bins closed and the lessee agrees that all such bins shall be regularly emptied cleaned and disinfected; and unless otherwise agreed the lessee shall have the windows and all glass in or on the premises cleaned at least quarterly at the lessee's cost and expense and in a good and workmanlike manner.
- PUBLIC
LIABILITY
- 1.19 That at the lessee's cost and expense the lessee will take out and maintain with a reputable insurance office of the lessee's choice a policy of insurance by way of public risk applicable to the premises covering the lessee and noting the interest of the lessor for a sum which is a reasonable level having regard to the nature of the property and the use to which it is put but not to be of a lesser sum than Twenty Million Dollars (\$20,000,000.00) (being the amount which may be paid out arising out of any one single accident or event).
- INSURANCE
- 1.20 That unless herein otherwise agreed to the contrary the lessor will at the cost in all things of the lessee insure and keep insured in the joint names of the lessor and the lessee or in the name of the lessor in the lessee's interest endorsed upon the policy [as the lessor may require] on a replacement / reinstatement basis against loss or damage by fire storm tempest explosion impact civil commotion earthquake vandalism malicious damage burglary and such other risks as the lessor may reasonable require with a reputable insurance office of the lessor's choice the premises and the lessor's plant and equipment and all plate and other glass forming part of the premises or therein installed for the full insurable value thereof.
- LOSS OF
RENTAL COVER
- 1.21 That at the lessee's cost and expense the lessor will in the name of the lessee and the lessor take out with the same insurer who insures the premises a policy of insurance covering the lessee against liability for rent payable under this lease and the lessor for loss of rental income in the event of damage to or destruction of the whole or part of the premises covering such rental liability for a period of not less than twelve (12) calendar months from the time of any damage to or destruction of the premises and all monies received by the lessor under such policy shall be credited to the rental payable hereunder. The Lessor must act reasonably in taking out the insurance policy.
- LESSEE To
PAY PREMIUMS
- 1.22 That unless herein otherwise agreed any insurance premium payable under the preceding three paragraphs shall be paid by the lessee to the lessor on demand being made therefor provided always that the insurance premium is required due to the act or omission of the lessee. Where the insurance premium is due to the act of an unrelated third party, the lessee will not be liable for the premium. Where the premises form only part of the property insured by the particular insurance policy the lessee shall pay the lessee's proportional share of any such premiums payable for any such insurance
- COMPLY WITH
INSURANCE
CONDITIONS
- 1.23 The lessee shall not do or suffer or permit to be done in upon or about the premises or any part or parts thereof anything whereby or any reason or on account whereof any policy or policies of insurance for the time being existing in respect of the premises or the lessor's plant and equipment may be or become void or voidable or may be vitiated or rendered void or voidable or whereby the rate of the premium on any such insurance or insurances shall be or may be liable to be increased and the lessee shall as and when required by the lessor pay all extra premiums payable by the lessor on account of extra risk caused by the use to which the premises are put by the lessee. The lessee acknowledges that the lessee at the lessee's cost shall comply with all reasonable directions and demands that may be made by any of the insurers selected. In the event of any insurance claim or any part or parts thereof being refused through any act neglect or default of the lessee the lessee shall at its cost make good any such damage on which indemnity has been refused or pay the amount of any such claim so refused at the lessee's own cost and expense.

- LESSEE NOT TO PREJUDICE LESSOR'S INSURANCE OR PREMIUM RATES 1.24 The lessee and persons under his control shall not do or permit to be done anything upon the premises whereby any insurance effected by the lessor or by the lessee may be rendered void or voidable or whereby the premium payable on any such insurance shall be liable to increase AND the lessee shall as and when required by the lessor pay all extra premiums payable by the lessor on account of extra risk caused by the use to which the premises are put by the lessee.
- INSURANCE COUNCIL REQUIREMENTS 1.25 The lessee covenants at all times and in all respects to comply with the requirements of the Insurance Council of Australia the Fire Protection Division of the South Australian Metropolitan Fire Service or any similar body having like jurisdiction and with the requirements of any relevant statute regulation or other notice issued by any similar authority NOTING that nothing in this clause requires the Lessee to undertake any structural or capital compliance except where the same is rendered necessary due to the Lessee's use of the premises.
- LESSEE'S RISK 1.26 The lessee agrees to occupy and use the premises at the lessee's risk and releases to the fullest extent permitted by law the lessor its servants agents and contractors from all claims and demands of any kind and from all liability which may arise in respect of any accident damage or injury occurring to any person or property in or about the premises or the building except to the extent that the liability is caused or contributed to by the lessor its servants agents and contractors.
- INDEMNITY BY LESSEE 1.27 The lessee shall keep the lessor indemnified against all claims actions losses and expenses of any nature which the lessor may suffer or incur or for which the lessor may become liable in respect of or arising out of;
- (a) the negligent or careless use or misuse by the lessee and persons under his control of the premises or the building or any of the utilities or other services to the premises or the building or arising out of any faulty fixture or fittings of the lessee;
 - (b) any loss or damage to property or injury or death suffered by any person arising from any other occurrence in or near the premises to any property or person using or near the premises arising wholly or in part by reason of any wrongful act or omission by the lessee and persons under his control
- Provided that the lessee's liability under this paragraph shall be limited to the extent only of the contribution towards such loss, damage, injury or death by the lessee or persons under his control.
- PREMISES NOT TO BE LEFT UNOCCUPIED 1.28 Not to cause suffer or permit the premises or any part thereof to be unoccupied for any period in excess of thirty (30) consecutive days without first obtaining the consents in writing of the lessor and the insurers of the premises in each case (the lessor's consent not to be unreasonably or capriciously withheld).
- LESSOR MAY INSPECT 1.29 To permit the lessor its attorney architect agents and other authorised representatives with or without workmen and others at all reasonable times of the day on reasonable prior notice to enter into and upon the premises and every part thereof in order to view and examine the state and condition thereof and of the lessor's plant and equipment and if any defects or wants of reparation be found for which the lessee is responsible the lessor may give to the lessee or leave for the lessee on the premises or some part thereof notice in writing of such defects or wants of reparation and the lessee shall at the lessee's cost within fourteen (14) days thereafter or sooner if the occasion so warrants make good any such defects or wants of reparation and the lessee shall permit the lessor its architects contractors workmen servants agents and others at all times on reasonable prior notice to

enter upon the premise and carry out any necessary repairs or maintenance and/or other improvements alterations or other work (including work of a structural nature) to the demised premises or to any part or parts thereof in compliance with the lessor's obligations under the provisions of this lease or otherwise deemed necessary desirable or expedient by the lessor PROVIDED ALWAYS that in the exercise of any such power the lessor will endeavor to avoid unduly hindering or inconveniencing the lessee in the conduct of the lessee's business on the premises.

LESSOR'S
PROFESSIONAL
COSTS

- 1.30 To pay the lessor upon demand:
- (i) all reasonable engineers' and architects' fees and other fees or expenses incurred by the lessor as a result of or in connection with any request of the lessee under this lease or any breach on the part of the lessee of any of the covenants agreements term conditions and restrictions herein contained or implied and to be observed performed and kept by the lessee;
 - (ii) one-half of the lessor's cost (as are permitted to be recovered from the lessee by law) of the preparation completion and stamping of this lease (if applicable) and it's counterpart and the preparation of the exhibits thereto and the stamp duty from time to time payable thereon and any costs and stamp duty incurred in connection with any document varying the terms of this lease and to comply from time to time with all requirements of the Acts or regulations governing payment of stamp duty or other duties or taxes on leases (including the costs of the consent of any mortgagee of the lessor, any fee charged by any mortgagee for any production of title and registration fees) and in case of default by the lessee in performing or observing any covenant herein contained or implied on in consequence of any request by the lessee for the lessor's consent or approval for any act, proposed act or matter in connection with the premises or this lease to pay to the lessor reasonable costs charges expenses and fees (on the court scale) to which the lessor shall become liable in consequence of or in connection with such a default or request.

SALE AND
LETTING
NOTICES

- 1.31 To permit the lessor and it's agents during the three (3) months immediately preceding the expiration or other sooner determination of the term to affix and retain on any part of the premises without interference notices for re-letting the premises and to permit the lessor at any time to affix and retain on any part of the premises without interference notices for selling the premises or any part thereof and will during any of these re-letting or sale periods permit all persons with written authority from the lessor or its agent at all reasonable times of the day to enter and view the premises and the lessor's plant and equipment provided any persons comply with any reasonable requirements of the lessee regarding access and that it conducted in a manner which causes minimal disruption to the lessee.

EXPIRATION
OF LEASE

- 1.32 At the expiration or other sooner determination of the lease to:
- (i) peaceably and quietly leave the premises and surrender the same together with the lessor's plant and equipment to the lessor clean and in good working order condition and repair;
 - (ii) deliver up to the lessor all keys for the premises including all additional keys cut for the premises in regard to all locks situated in or upon the premises and also to deliver up all security passes or cards (if any) in the possession of the lessee. Failure by the lessee to comply shall render the lessee responsible to pay for the costs of implementing a new security system and/or lock for the premises.

LIABILTIY JOINT
AND SEVERAL

- 1.33 Where there shall be more than one legal person as lessee then the liability of such persons under this lease shall be joint and several.

NO REPRESENTATIONS
OR WARRANTIES

- 1.34 That in respect of entering into this lease no representations or warranties of any kind or nature verbal or otherwise have been made to the lessee by the lessor it servants or agents that are not expressly embodied herein.

QUIET
ENJOYMENT2.

The lessor hereby covenants with the lessee that the lessee paying the rent reserved by this lease at the times and in the manner herein contained and observing and performing and keeping all and singular the covenants conditions agreements and restrictions herein contained or implied and on the part of the lessee to be observed performed and kept according to the true intent and meaning of this lease shall and may quietly and lawfully have hold and enjoy the premises and the lessor's plant and equipment (if any) during the term without unlawful interruption or disturbance from or by the lessor or any person claiming under or in trust for the lessor PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY COVENANTED AND AGREED between the lessor and the lessee as follows:

NECESSARY
CONSENTS

2.1

That insofar as any consent authorisation or permission may be required from any governmental or semi-governmental authority including the Registrar General of Deeds or any Local Council or Corporation to this Lease or the terms hereof this lease is made expressly subject to the obtaining of any such consent authorisation or permission insofar as it may be applicable, this lease is subject to the obtaining of any consents required under the Real Property Act 1886 (as amended from time to time) and the regulations made thereunder and the Development Act 1997 (as amended from time to time) and the regulations made thereunder. It is acknowledged by the parties that should the obtaining of any such authorisation consents or permissions be overlooked for any reason whatsoever neither party may use any such lack of consent authorisation or permission to avoid the terms hereof until such time as either or both parties have had a reasonable opportunity (after the time that it was discovered that certain consents, authorisation or permission was not obtained) of obtaining any such necessary consent authorisation or permission.

RATES AND
TAXES

2.2

That Schedule VI hereof shall set forth who shall be responsible to pay rates and taxes and if it is the lessee then forthwith upon demand being made therefor by the lessor the lessee shall pay to the lessor the amount or amounts paid or payable by the lessor during the term for rates and taxes (excluding State land tax) council water and sewerage rates which shall be assessed or imposed upon or be payable in respect of the premises. Any other matters set out in Schedule VI shall be deemed to be added to this clause and where any such added matters are inconsistent with this clause the terms of Schedule VI shall prevail.

AIR-
CONDITIONING
LESSEE

2.3

Where

(i) there is air-conditioning plant installed on the premises it is the responsibility of the lessee to service and maintain same at the lessee's cost unless herein otherwise provided. The lessee shall furnish to the lessor a certificate from a competent firm or authority acceptable to the lessor that all mechanical and air conditioning equipment in or upon the demised premises is in sound working order condition and repair with reference to the condition of the plant at the commencement date of this Lease (nothing in this clause imposes any capital or structural repair or maintenance obligations and the lessee's obligation is limited to the condition of the plant at the commencement date of this Lease and does not impose a greater obligation) and this certificate shall be supplied by the lessee to the lessor at the expiration or sooner determination of this lease and/or within seven (7) days of the lessor requesting the lessee for such a certificate which request may be made by the lessor to the lessee from time to time and at any time during the term hereof;

(ii) Not applicable to this lease

AIR-
CONDITIONING
LESSOR

2.4

That the lessor is not and will not be under any liability to the lessee or any other person for any loss or damage to stock or any property belonging to the lessee or to any other person contained in upon or about the premises whether such loss or damaged is occasioned by water as a result of water pipes bursting or leaking or by water overflowing or air conditioning failure or whether through any act or omission on the part of the lessor or any tenant servant or agent of the lessor or the occupiers of any other adjoining or adjacent premises owned or controlled by the lessor or whether occasioned by fire storm

LESSOR
NOT LIABLE
FOR DAMAGE

tempest or other cause of whatsoever kind or nature except where the liability is caused or contributed to by the lessor or a person having authority of the lessor.

COMMON
AREA

2.5 That where the premises form part of a larger building or complex and where there are common areas over which the lessee has certain rights these shall be known as the "common area". The parties acknowledge that the common area excludes the car parks licensed to the lessee for use as set out in clause 9. In regard to any common area it is agreed that the lessor shall maintain or cause to be maintained any such common area and that the lessor may from time to time and at any time improve extend vary amend resume increase or reduce or in any manner whatsoever alter or deal with such common area PROVIDED that reasonable space and facilities are maintained in such common area for the purposes of the lessee and the lessor; and the lessee further agrees that from time to time and at any time the lessor may make reasonable rules concerning the use by the lessee of the common area which rules shall in all respects be complied with by the lessee and shall be deemed specifically incorporated herein as terms of this lease. Furthermore, the lessor may grant rights in common to other tenants of the building or complex in regard to the common area provided that the exercise of those rights by the other tenants do not unreasonably interfere with the lessee's exercise of its rights over the common area.

RULES AND
REGULATIONS

2.6 That the lessor may from time to time make and give reasonable notice in writing to the lessee of such rules and regulations (not being inconsistent with the terms and provisions of this lease) as the lessor shall consider to be reasonably necessary for the safety care cleanliness order and condition of the premises or the building or the complex of which the premises form part and in the best interests of the lessor and of the lessees therein and that the lessee shall at all times comply with all or any of such rules and regulations as may be notified to the lessee by the lessor and compliance with such rules and regulations shall be an obligation imposed on the lessee by this lease as if such rules and regulations were specifically incorporated herein and the lessor may from time to time vary or add to any such rules or regulations made under the foregoing provisions hereof and clause 2.4 hereof.

LESSOR MAY
REMEDY

2.7 That if the lessee shall fail to do any matter or thing under this lease the lessor may (but shall not be obliged to) carry out and perform any such matters which the lessee neglected to perform and the lessor's cost in doing so may be recovered from the lessee forthwith as if the same were rent in arrear and unpaid

OVERDUE
INTEREST

2.8 That without prejudice to the rights powers and remedies of the lessor otherwise under this lease the lessee will pay to the lessor interest at the rate set out in schedule VII on any monies due but unpaid fourteen (14) days after the same fell due and payable and unremedied despite written notice by the lessee to the lessor on any account whatsoever pursuant to this lease such interest to be computed from the due date for the payment of the monies in respect of which the interest is chargeable until payment of such monies in full are to be recoverable in like manner as rent in arrears and unpaid.

LESSEE
VACATING

2.9 (i) Provided that the lessee is not in default the lessee shall be permitted (unless otherwise agreed between the parties hereto in writing) prior to the expiration of the term of this lease to remove all structures plant equipment and/or other alterations or additions installed or made by the lessee (whether with or without the permission of the lessor) and make good all or any damage to the premises caused by any such installation alterations and/or additions and where the term of this lease shall be determined prior to the expected expiration of the lease the lessee shall effect such removal and make good damage within a reasonable time after such determination.

(ii) If the lessee shall not have completed such removal and making good on the expiration of the term of this lease or in the case of early determination within a reasonable time after such determination, except where agreed otherwise by parties, the lessor may remove and store any property of the lessee that the

lessee shall have failed to remove and the lessee undertakes to repay to the lessor on demand all costs and expenses incurred by the lessor in so doing including all costs and expenses in making good any damage as aforesaid.

CLEANING

- 2.10 That when the lessee vacates the premises the lessor may (acting reasonably) engage professional cleaners to clean the whole of the interior of the premises and all of the appliances furniture fixtures and fittings therein situate and all of the lessor's plant and equipment (if any) and all or any other areas under the care and responsibility of the lessee at the cost in all things of the lessee if in the reasonable opinion of the lessor the lessee has failed to adequately clean same.

LESSEE'S
DEFAULT

- 2.11 If at any time during the occupation of the premises by the lessee:
- (i) any rent or other monies payable by the lessee are in arrears for more than fourteen (14) days after formal demand has been made and not rectified; or
 - (ii) in case of default by the lessee in respect of any obligation on the part of the lessee arising out of any term condition or covenant contained in this lease and such default if continued for fourteen (14) days or in the case of repairs required to be effected by the lessee such repairs are not completed within a reasonable time; or
 - (iii) execution be levied against any of the assets of the lessee; or
 - (v) the lessee (being a company) either:
 - (1) goes into liquidation (other than a voluntary liquidation for the purposes of reorganisation); or
 - (2) is wound up or dissolved; or
 - (3) enters into a scheme of arrangement with its creditors or any class thereof; or
 - (4) is placed under official management; or
 - (5) a receiver or manager of any of assets is appointed; or
 - (6) an inspector is appointed pursuant to the Corporations Law or under a corresponding Part or Section of a Code of Statute of another State or Territory

THEN notwithstanding any prior waiver or failure to take action by the lessor or indulgence granted by the lessor to the lessee in respect of any such events whether past or continuing it shall be lawful for the lessor or any other person duly authorised by it (subject to due compliance with the Landlord and Tenant Act 1936 (as amended) (if applicable) to re-enter upon the premises or any part thereof in the name of the whole and thereby determine the estate of the lessee; and to remove or otherwise deal with the lessee's property as provided in this lease without prejudice to the rights of the lessor in respect of any action or other remedy for arrears of rent or breach of covenant or damages as the result of any such event.

ESSENTIAL
TERMS

- 2.12 (i) Each of the covenants by the lessee which are specified in this paragraph are essential terms of this lease:
- (1) the covenant to pay rent and additional payments throughout the term of this lease;
 - (2) clauses 2.17, 2.18 and 2.19 hereof relating to assignment and sub-letting;
 - (3) clause 1.2 hereof relating to the use of the premises by the lessee;
 - (4) clause 1.9 hereof relating to the painting by the lessee;
 - (5) clauses 1.6 and 1.8 relating to the lessee's obligation to keep in good repair and condition the premises and the lessor's plant and equipment;
 - (6) clause 1.7 relating to damage to the premises or the lessor's plant and equipment.

- (ii) In respect of the lessee's obligation to pay rent the acceptance by the lessor of arrears or of any late payment of rent shall not constitute a waiver of the essentially of the lessee's obligation to pay rent in respect of those arrears or of the late payments or in respect of the lessee's continuing obligation to pay rent during the lease term.
- (iii) The lessee hereby covenants to compensate the lessor in respect of any breach of an essential term of this lease and the lessor is entitled to recover damages from the lessee in respect of such breach. The lessor's entitlement under this clause is in addition to any other right remedy or entitlement to which the lessor is entitled (including the right to re-enter and determine the estate of the lessee) and shall not be prejudiced by the exercise of the right of re-entry.

DAMAGES IN
RESPECT OF
REPUDIATION OF
BREACH BY
LESSEE

- 2.13
- (i) In the event that the lessee's conduct (whether by way of action or omission) constitutes a repudiation of this lease (or of the lessee's obligations under this lease) or constitutes a breach of any covenant contained in this lease, the lessee covenants to compensate the lessor for the loss or damage suffered by reason of the repudiation or breach.
 - (ii) The lessor shall be entitled to recover damages against the lessee in respect of repudiation or breach of covenant for the damage suffered by the lessor during the entire term of this lease.
 - (iii) The lessor's entitlement to recover damages shall not be affected or limited by any of the following:
 - (1) if the lessee shall abandon or vacate the premises;
 - (2) if the lessor shall elect to re-enter or to determine the estate of the lessee;
 - (3) if the lessor shall accept the lessee's repudiation;
 - (4) if the parties' conduct shall constitute a surrender by operation of law.
 - (iv) The lessor shall be entitled to institute legal proceedings claiming damages against the lessee in respect of the entire lease term including the periods before and after the lessee has vacated the premises and before and after the abandonment termination repudiation acceptance or repudiation or surrender by operation of law referred to in sub-paragraph (iii) of this clause whether the proceeding are instituted before or after such conduct.
 - (v) In the event of the lessee vacating the premises whether with or without the lessor's consent the lessor shall be obliged to take reasonable steps to mitigate his damages and to endeavor to lease the premises at a reasonable rent and on reasonable terms. The lessor's entitlement to damages shall be assessed on the

DEFAULT RIGHTS
OF LESSOR

- 2.14 That if the lessee shall have made default the lessor may at its option (subject to due compliance with the Retail and Commercial Leases Act 1995):
- (i) Without any further demand or notice re-enter and take possession of the premises (including the lessor's plant and equipment) or any part thereof in the name of the whole and eject the lessee and all other persons therefrom and repossess and enjoy the same as of its first and former estate and thereupon this lease shall be determined without prejudice to the rights of the lessor in regard to any antecedent breach or breaches; or
 - (ii) By notice in writing to the lessee determine this lease, and from the date set out in such notice this lease shall be absolutely determined without prejudice to the rights of the lessor in regards to any antecedent breach or breaches; or
 - (iii) By notice in writing to the lessee elect to convert the term into a tenancy from month to month in which event this lease shall be determined as from the giving of such notice and thereafter the tenant shall hold the premises (including the lessor's plant and equipment) as tenant from month to month at a monthly rental equal to one hundred (100) percent of the last months' rent paid or payable by the lessee prior to the conversion of this lease to a monthly tenancy any such monthly rental being payable monthly in advance but otherwise on the terms and conditions of this lease so far as they can be

applied to a monthly tenancy which monthly tenancy may be determined by either the lessor or lessee as set out in sub-clause 2.21 hereof.

WAIVER
NEGATED

2.15 That no waiver by the lessor of one or more breaches of any covenant obligation or provision contained in or implied by this lease shall operate as a waiver of another breach of the same or any other covenant obligation or provision contained in or implied by this lease

LESSOR MAY
REMOVE AND
SELL LESSEE'
BELONGINGS

2.16 The lessee acknowledges that the lessor has a right to distrain for rent and in the event of the lessor re-entering as aforesaid (subject if applicable to due compliance with the Retail and Commercial Leases Act 1995) the lessor may remove from the premises all of the plant equipment stock and belongings of the lessee and store same either on the premises or at another place without being liable for any loss or damaged occasioned to any such property and may after having given to the lessee fourteen (14) days' notice in writing of his intention to sell such property or any part or parts thereof proceed to sell the same without being liable for conversion at such price and upon such terms as the lessor considers reasonable and the net proceeds of such sale after payment of all expenses of removal and storage and sale shall be payable to the lessee upon the lessee demanding the same subject to any amount or amounts that the lessor may deduct therefrom as being due and payable by the lessee to the lessor. The lessor is bound by the provisions of the Landlord and Tenant Act regarding distraint.

2.17 That the lessee may not assign sublet mortgage or part with the possession of the premises or any part or parts thereof any of the lessor's plant and equipment or with the lessee's interests and rights under this lease or any part or parts thereof without the consent in writing of the lessor in each instance first had and obtained which consent. In respect to the consent for any assignment:

- (i) the lessee must request the lessor's consent in writing and the lessee must provide the lessor with information the lessor reasonably requires about the financial standing and business experience of the proposed assignee;
- (ii) the lessor is entitled to withhold its consent to an assignment of the lease in any of the following circumstances (and is not entitled to withhold that consent in any other circumstances):
 - A. if the proposed assignee proposes to change the use to which the premises is put; or
 - B. if the proposed assignee is unlikely to be able to meet the financial obligations of the lessee under the lease; or
 - C. if the proposed assignee's retailing skills are inferior to those of the assignor; or
 - D. if the lessee has not complied with the procedural requirements for obtaining the lessor's consent

AND if the lessor withholds consent to the assignment of this lease, the lessor must give the lessee a written statement of the grounds on which consent is withheld.

CONSENT
NECESSARY
FOR ASSIGNMENT

2.18 That the lessee will upon making any application for consent (which shall be in writing) to any transfer assignment underletting or parting with the possession of the premises or any part thereof or this lease furnish to the lessor a statutory declaration made by the lessee (or if a company by a responsible officer of the lessee) setting forth the full amount of the rent premium or other consideration to be paid to the lessee in respect thereof and PROVIDED FURTHER that the lessor may as a condition of any such consent require the proposed assignee transferee underlessee mortgagee or person to whom possession is proposed to be given to enter into a direct covenant with the lessor (to be prepared and stamped at the expense of the lessee) to perform and observe all the lessee's obligations under this lease and non-compliance with such condition shall be deemed to be a reasonable ground for refusing such consent notwithstanding the respectability and financial responsibility of the proposed assignee transferee underlessee mortgagee

or person to whom possession is proposed to be given. The cost to the lessor of any investigation of the suitability of a proposed assignee transferee underlessee mortgagee or person to whom possession is proposed to be given (including the cost of any legal advice obtained) shall be carried out at the expense in all things of the lessee and shall be payable by the lessee whether any such change in possession takes place or not.

PRESUMED
UNLAWFUL
ASSIGNMENT

- 2.19 That an unlawful assignment of the lease shall be deemed to have been effected if the lessee or any one of the persons or corporations comprising the lessee being a company has had a change in the beneficial ownership of its shares since the date hereof which change has the effect of altering the person or persons in effective control of the company. Any such unlawful assignment taking effect without the lessor's prior written consent shall be deemed a serious default by the lessee under the provisions of this lease and shall allow the lessor to exercise his default rights under clause 2 hereof.

RENEWAL

- 2.20 If Stipulated in Schedule VIII then provided that the lessee shall have substantially complied with all the covenants terms and conditions of this lease during the term or terms hereof (as the case may be) and shall not have regularly committed any breach of a material term or breaches of a material term hereof and there shall be no subsisting breach of a material at the time the renewal applies and the lessee shall have given to the lessor not less than three (3) or more than six (6) calendar months prior to the date of the expiration of the relevant term notice in writing of the lessee's desire to renew the lease then the lessee shall be entitled to renewal as set out in Schedule VIII hereto commencing immediately on the expiration of the relevant term at rentals determined in accordance with Schedule X herein and upon and subject to the same covenants terms and conditions of this lease except this right of renewal unless otherwise set forth in Schedule VIII hereof.

TENANCY ON
HOLDING OVER

- 2.21 That in the event of the lessee holding over upon the expiration of the term hereby granted or on the expiration of the term of any renewal with the consent express or implied of the lessor then in the absence of any express agreement in writing to the contrary such holding over shall be deemed to be a calendar monthly tenancy upon the same terms covenants conditions and restrictions as are herein set forth (insofar as the same can be applied) except that the monthly rental shall be equal to one hundred percent (100%) of the last month's rent paid by the lessee immediately prior to the expiration of the period above referred to or if rental was not paid monthly the equivalent thereof and such tenancy may be determined by either the lessor or the lessee giving notice in writing to quit to the other. Such notice may however not require possession less than thirty (30) days from the giving of such notice but such notice may however expire on any day whether at the end of a month of tenancy or not and in the event of any such notice expiring during a month of the tenancy the rent shall be adjusted accordingly to the date of expiration of the said notice PROVIDED HOWEVER that no such holding over shall be implied from the fact that the lessee failed to give up possession of the premises to the lessor upon the expiration of the term or any renewal thereof.

SPECIAL
CONDITIONS

- 2.22 That any special terms covenants and conditions agreed to between the parties hereto shall be set out in Schedule X hereof and those special terms covenants and conditions insofar as they may be contrary to or in conflict with any other conditions hereof shall apply in preference to any such other contrary or conflicting term covenants and conditions.

SERVICE OF
NOTICES

- 2.23 That any notice required to be served by the lessor including any notice to quit may be served upon the lessee by prepaid registered letter post addressed to the lessee at the lessee's address as set out herein or by affixing any such notice on any part of the premises and shall be deemed to be served on the lessee no later than three (3) clear days following the posting thereof or on the day following such affixation whether the same comes to the notice of the lessee or not.

APPLICABLE
LAW AND
CONSTRUCTION

2.24 This lease shall be governed by and constructed in accordance with the laws of the State of South Australia. The covenants conditions and provisions of this lease and each and every part thereof contained in this lease shall be construed so as not to infringe the provisions of any Act of Parliament applicable thereto or be void or invalid according to the common law but if any such covenant provision or condition on its true interpretation does infringe any such provision or is void or invalid according to the common law that covenant provision or condition shall be read down to such extent as may be necessary to ensure that it does not so infringe or is not so void or invalid and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character and in the event that the infringing covenant provision or condition cannot be so read down it shall be deemed to be void and severable.

2.25 That the lessee at the lessee's expense shall:

WASTE

(i) Ensure that all waste is placed daily in suitable receptacles and that any wet waste is first enclosed or wrapped in some waterproof container or membrane prior to being deposited in the receptacle.

REPAIR

(ii) immediately make good any damage to any part of the premises (including the common areas which are damaged by the lessee) (if any) caused by the lessee and/or any persons under the lessee's control.

LIGHTING

(iii) Replace all damaged or non operative light globes and tubes within the premises.

NOTIFY DAMAGE

(iv) immediately notify the lessor of all or any damage to the premises or any of the lessor's plant and equipment or the common areas.

STRUCTURE

2.26 That the lessee shall not install or replace in or on the premises any heavy item fixture or fitting which is or is likely in the reasonable opinion of the lessor to overload the structure or any part of the premises.

The lessor and lessee further agree:

RENTAL
TO BE AGREED

3.1 That the rent payable for the initial rental period is as set out on the face page hereof and that the rental for subsequent rental periods (if any) shall be agreed but failing agreement shall be determined as herein otherwise set forth.

RENTAL
PAYMENTS

3.2 That the lessee shall pay all rent and other monies payable hereunder on the due dates as provided herein without any abatements or deductions whatsoever and shall pay same to the lessor or such person or firm as directed in writing by the lessor from time to time.

VALUATION
FEES

3.3 That unless herein otherwise provided the parties shall pay in equal portions for any valuation fees incurred in undertaking a valuation in accordance with clause 3.5 and the reasonable expenses and costs of the lessor and any reasonable expenses and fees incurred by the lessor with his legal and real estate advisors in relation to the fixing of any rentals on any of the rental reviews contemplated by clause 3.5.

C.P.I
METHOD

3.4 That if the parties have elected to determine future rentals in accordance with the Consumer Price Index the annual rental for such new rental period (subject to the provisions of sub-clause 3.6 of this clause if applicable and sub-clause 3.8 of this clause) shall be the amount represented by R in the formula –

$$R = \frac{A \times C}{B}$$

Where

A= The Australian Bureau of Statistics' All Groups Consumer Price Index for Adelaide applicable as at the rent review date in the year in which the rent increase is being calculated

- B= Australian Bureau of Statistics' All Groups Consumer Price Index for Adelaide applicable as at the date of commencement of this lease or at the last rent review date whichever shall be the most recent
- C= The annual rent payable for the rental period immediately prior to the rent review date in the year in which the rent increase is being calculated.

MARKET VALUATION

3.5 That if the parties have elected to determine future rentals in accordance with market valuation method then the new rental for any new rental period shall be fixed by an independent licensed valuer to be appointed by the President (or his nominee) for the time being of the Australian Institute of Valuers and Land Economists (SA Division) Inc. and failing such body being in existence at the relevant time or such President failing to appoint a valuer within a reasonable time then by the President (or his nominee) for the time being of the Law Society of South Australia Inc. Any valuer so appointed shall be a full member of the Australian Institute of Valuers and Land Economists (SA Division) Inc. and shall be competent and expert as a valuer of the kind of premises demised by this lease. It shall be competent for either the lessor or lessee to ask for such a valuation if the need arises. The valuer shall fix the annual rent (subject as herein provided) at an amount which in the opinion of the valuer is the fair market rental value of the premises for the rental review period and the amount so fixed shall be the annual rent payable by the lessee as from the time specified in sub-clause 3.6 hereof. Any such valuer so appointed shall be deemed to be acting as an expert and not as an arbitrator and any such valuation shall be accepted by the parties as a fair and proper valuation.

RENTAL ALTERATION DATE

3.6 Any variation in rental resulting from any determination under this lease shall take effect on and from the particular rent review date and not from the time of the fixing of the variation.

VALUATION IN LIEU OF INDEX

3.7 That should for any reason whatsoever there not be any figures available and/or known as the Consumer Price Index (All Groups) for Adelaide for the purposes outlined in sub-clause 3.4 of this clause then subject to sub-clause 3.8 hereof any new rental shall be fixed by agreement or failing agreement then by the market valuation method set out in sub-clause 3.5 of this clause if the need arises. The valuer shall fix the annual rent (subject as herein provided) at an amount which in the opinion of the valuer is the fair market rental value of the premises for the rental review period and the amount so fixed shall be the annual rent payable by the lessee as from the time specified in sub-clause 3.6 hereof. Any such valuer so appointed shall be deemed to be acting as an expert and not as an arbitrator and any such valuation shall be accepted by the parties as a fair and proper valuation.

ALTERNATIVE TO INDEX

3.8 Where there are no figures available known as the Consumer Price Index (All Groups) for Adelaide but virtually identical information is available but under a different name or title (whether or not prepared by the Australian Bureau of Statistics) then such information shall be used for the purposes of sub-clause 3.4 of this clause.

4. The lessor and the lessee further agree:

SECURING PREMISES

4.1 That the lessee shall at all times secure such parts of as practical and able the premises against unauthorised entry particularly when the premises are left unoccupied and the lessor reserves the right by its servants and agents to enter into and upon the premises and secure same if the premises are left so unsecured.

AIR-CONDITIONING EFFICIENCY

4.2 That where the premises are air-conditioned the lessee shall take such steps as are necessary to prevent any unnecessary and substantial outside infiltration of air into the premises other than by the means provided by the air-conditioning unit and the lessee shall not do anything whereby the working efficiency of the air-conditioning plant servicing the premises may be adversely affected.

DESIGNED
PURPOSE ONLY

4.3 That the lessee shall not use or permit to be used for other than their designed purposes any of the fixtures or fittings of the premises or the plant and equipment of the lessor.

DANGEROUS
MATERIALS

4.4 That the lessee shall not store or use inflammable or dangerous substances upon the premises (except as may be necessary for the ordinary conduct of the permitted use of the premises)

PREMISES
DESTROYED

4.5 That if during the term the premises are destroyed or extensively damaged by any contingency so as to be unfit for the permitted use or the actual lawful use to which the lessee has put the premises then

- A. The lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoing or other charges, that is attributable to a period during which the premises cannot be used under the lease or is inaccessible due to that damage;
- B. If the premises are still usable under the lease but its usability is diminished due to the damage, the lessee's liability for rent and any amount for outgoing attributable to a period during which its usability is diminished is reduced in proportion to the reduction usability caused by the damage.
- C. If the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee may terminate the lease by giving not less than seven (7) days' notice in writing to the other and no compensation is payable in respect of that termination and lessee may have such time as reasonably necessary to vacate the premises and no obligation to pay rent will apply during that period;
- D. If the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor in writing to do so, the lessee may terminate the lease by giving not less than seven (7) days' notice in writing of termination to the lessor and lessee may have such time as reasonably necessary to vacate the premises and no obligation to pay rent will apply during that period;
- E. Sub-clauses 4.1 to 4.4 hereof do not affect a right of the lessor to recover damages from the lessee in respect of damage or destruction to which those sub-clauses apply;
- F. Nothing in this Clause 4.5 prevents the lessor or the lessee from terminating the lease by agreement if the premises or the building of which it forms part is damaged or destroyed

PROVIDED THAT the lessee is not relieved of the obligation to pay rent if the damage results from the wrongful act or negligence of the lessee or an employee or agent of the lessee unless the lessor is insured against loss of rent under an insurance policy and the lessee contributes to the insurance premium.

RETAIL AND
COMMERCIAL
LEASES ACT

4.6 Where the premises hereby leased are not a retail shop as defined in Section 3 of the Retail and Commercial Lease Act 1995 is not applicable or where the lease arises under an agreement for sale and purchase of premises or where the lease arises under a mortgage with respect to the premises or where the lease arises by virtue of a scheme under which a group of adjacent premises are owned by a company and the premises comprising the group are let by the company to persons who jointly have a controlling interest in the company or where the lease arises under a prescribed agreement or an agreement of a prescribed class or where the premises, the subject matter of this lease, are prescribed premises or premises of a prescribed class then the following additional provisions shall apply:

- (i) any rental in advance and/or security bond shall be held by the lessor and not by any other person firm or company or authority;

- (ii) the lessee shall at all times during all normal business hours during the said term keep open and use the premises for the purpose stated in Schedule 1 hereto;
- (iii) that in the case of any transfer or assignment of the lease or the sub-letting of the whole or any substantial portion of the premises the lessor may require the lessee to deposit with the lessor a sum of money to cover the future responsibilities of the lessee in regard to it's obligations hereunder particularly in regard to such items as future rates and taxes, pending replacement of plant and equipment furniture carpet and other such similar items. The amount to be deposited is to be calculated pro rata on the anticipated future costs (which shall be at the reasonable discretion of the lessor) pro rata as to the time that the lessee has enjoyed the premises compared with the term of the lease (excluding any future options for renewal).

4.7 The lessor and the lessee further acknowledge and agree that whether or not the Retail and Commercial Leases Act 1995 applies as set forth in sub-clause 4.6 of this clause the lessee shall be required at all times during all normal business hours during the said term to keep open and use the premises for the purpose set forth in Schedule 1 hereto when the premises to which this lease relates form part of a group of premises constructed or adapted accommodating six (6) or more businesses.

4.8 Where the Retail and Commercial Leases Act 1995 applies to this lease the security bond, the amount of which is set out in Schedule XII (which is not applicable while the lessee remains Advanced Viticulture and Management Pty Ltd) shall be dealt with in accordance with the said Act by the lessor or its agent depositing the same with the Commissioner for Consumer Affairs in accordance with Section 19 of the said Act.

POWER OF
ATTORNEY

4.9 That upon the happening of any event whereby the lessor is entitled and has exercised its right to re-enter and take possession of the premises and to determine this lease the lessor shall become and the lessee hereby irrevocably nominates constitutes and appoints the lessor the true and lawful attorney of the lessee for and in the name of the lessee or for and in the name of the lessor or otherwise to do all or any of the following acts and things (but without any obligation on the part of the lessor so to do) namely:

- (i) to execute a surrender of this lease and to procure the registration thereof;
- (ii) to record this power of attorney and to procure to be done any acts matters or things which may be requisite or proper for giving full effect thereto;
- (iii) to pay all the lessor's proper costs fees charges and expenses whatsoever that may be incidental to or payable in respect of any of the matters in this lease referred to;
- (iv) to appoint and substitute from time to time, one more attorney or attorneys under the attorney now appointed with the same or limited powers and such substitution at pleasure to remove and another or others to appoint in his or their stead;
- (v) to in all respects comply with any defaults or neglects of the lessee under this lease;
- (vi) to apply for and obtain the renewal of any now existing or any future franchise licenses or permits relating to the premises or any part or parts thereof and to sign all notices applications and other documents and writings and to do or perform all acts matters and things that at any time may be necessary or requisite or that the lessor may at any time deem necessary or requisite for the purposes of applying for and obtaining a renewal of any such franchises licenses permits or for the purpose of transferring to or vesting any such franchises licenses or permits or any renewals thereof in such person or persons as the lessor may think fit;

- (vii) to apply for the approval of any licensing authority for the appointment and to appoint any person to be the agent or manager of the lessee or to appoint any person licensee under any license and to manage and carry on the business conducted under any such license;
- (viii) generally in the name of the lessee or otherwise to do all things and sign and execute all instruments and writing that the lessor may deem advisable or expedient in or about or in connection with any franchise license or permit or the renewal or transfer thereof into the name of such person as the lessor may direct or require.

AND the lessee hereby allows ratifies and confirms and covenants and agrees to allow ratify and confirm all and whatever the lessor or the lessor's substitute or substitutes may lawfully do or cause to be done under or by virtue of this Power of Attorney and declares that this Power of Attorney shall continue to be of full force and effect until all such acts deeds payments matters and things hereby authorized (as the lessor or the lessor's substitute or substitutes may think proper to execute perform made institute or carry through) have been done made and completed notwithstanding the expiration or determination of the lease or the death of the lessee and the lessee declares that this Power of Attorney is irrevocable and the lessee further covenants with the lessor that all costs fees charges and expenses properly paid or properly incurred by the lessor acting as such attorney shall be payable forthwith by the lessee to the lessor upon demand being made therefor and may be considered as and recovered as rent in arrear and unpaid.

SUBORDINATION

- 4.10 The lessee agrees upon request by the lessor to subordinate this lease to any mortgage of the lessor's interest in the site and any variation or extension thereof so as to give such mortgage priority over the lease and to execute and deliver to the lessor (without cost to the lessee) upon request by the lessor such documents including withdrawals of caveat as may be required to effect such subordination and if the lessee shall fail to execute and deliver any such documents within ten (10) days after receipt of written notice so to do the power of attorney given by Clause (i) hereof shall extend to and authorise the Attorney or Attorneys therein described to execute any such document on behalf of the lessee PROVIDED HOWEVER that the lessee shall not be required to effect such subordination unless the mortgagee named in any such mortgage shall first agree in writing for the benefit of the lessee that so long as the lessee is not in default hereunder neither the lease nor any of the rights of the lessee hereunder shall be terminated or modified (except as herein provided) nor shall the lessee's possession of the premises be disturbed or interfered with by any sale action or proceeding under the said mortgage.

MORATORIUM

- 4.11 That to the full extent permitted by law the application to this lease of any moratorium or other act whether State or Federal having the effect of extending the term, reducing or fixing or postponing the rent or payment thereof or otherwise affecting the operation of the term of this lease is expressly excluded and negated.

GOODS AND SERVICES

5. The lessee shall make payment to the lessor of goods and services tax ("GST") on the rental or any other payment payable by the lessee pursuant to this lease and such goods and services tax shall be paid by the lessee in addition to the rental and such other payments which would otherwise have been payable pursuant to this lease if not for such goods and services tax and such additional payment shall be made at the same time as each rent installment or other payment is due and payable pursuant to this lease. Without limiting the effect of the foregoing the following GST provisions are applicable to this lease:

5.1 GST Definitions

For the purposes of this Clause 5:

- “GST” means GST with the meaning of the GST Act
- GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (as amended)

Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.

5.2 Except where express provision is made to the contrary, and subject to this Clause 5 the *consideration* payable by any party under this lease represents the value of any *taxable supply* for which payment is to be made.

5.3 Liability to pay any GST

Subject to sub-clause 5.2 above, if a party makes a *taxable supply* in connection with this lease for a *consideration*, which, under sub-clause 5.2 or sub-clause 5.4 hereunder, represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

5.4 Reimbursements

If this lease requires the lessee to pay, reimburse or contribute to an amount paid or payable by the lessor in respect of an *acquisition* from a third party for which the lessor is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the lessee will be the *value* of the acquisition by the lessor plus, if the lessor's recovery from the lessee is a *taxable supply*, any GST payable under sub-clause 5.2.

5.5 Tax invoice

A party's right to payment under sub-clause 5.2 is subject to a valid *tax invoice* being delivered to the party liable to pay for the *taxable supply*.

INTERPRETATION

6.

6.1 In construing the terms of this lease unless there be something in the subject or context inconsistent or repugnant therewith:

“the lessor” shall mean the person named on the face page hereof and his executors administrators successors and assigns and any other person entitled to the reversion immediately expectant on the expiration of the term.

“the lessee” means the person or persons named and described on the face page hereof and the servants contractors agents and invitees of that person and the executors administrators successors and permitted assigns of that person.

“this lease” includes all schedules and plans (if any) annexed hereto and any rules for the time being in force as provided by the lease.

“the common area” means such part of the lessors property which does not form part of the premises but over which the lessee has certain rights and such area may be shown or described as common area in the lease.

“the term” means the initial term granted and is deemed to include any extension or renewal of the term and is extended to include any period during which the lessee holds over or remains as a tenant in occupation of the premises (unless repugnant or inconsistent to the context in which it is used)

“The premises” means that area described on the face page of the lease and all of the buildings fixtures and fittings erected thereon and shall be deemed to include such floor

coverings curtains blinds ceiling light fittings air-conditioning and other equipment provided by the lessor from time to time to service the premises together with the lessor's plant and equipment; and in the case of the whole of a building being comprised in the premises includes the exterior surfaces of any such building and in the case of a portion only of the building being the premises includes the interior of all walls ceilings doors windows and the like of the building.

"rental period" means any period of the term identified by the parties hereto as a given period of the term or time during which the rental payable remains unchanged.

- 6.2 In this lease where the context so permits the words importing the masculine gender shall include the feminine and neuter gender and vice versa and words importing persons shall include corporations and words importing the singular number shall include the plural and vice versa (in all instances unless repugnant or inconsistent to the context in which they are used).
- 6.3 Where the initials "N/A" appear in the Schedules hereto it shall mean that the particular schedule and the clause or the part thereof which refers to that schedule shall not apply to the terms of this lease.
- 6.4 The margin headings used in this lease are meant for convenience of reference only and do not form part of the lease and are not intended in any way to paraphrase abbreviate or for that matter affect the interpretation of the lease. For the purposes of interpretation, they are to be completely ignored.
- 6.5 Where in this lease a reference is made to the Australian Institute of Valuers, such reference shall if that institute has ceased to exist, be deemed a reference to such body or association as then serves substantially the same objects as that institute.
- 6.6 Any reference in this lease to any Act of Parliament Statute By-Law or Regulation is deemed to include all amendments and revisions made from time to time to that Act of Parliament Statute By-Law or Regulation.

CLAUSES

7. Where the parties hereto have agreed that certain clauses or provisions of this lease shall not apply to this lease the details of those matters shall be set out in Schedule III.

Subject in all things to what may be provided for in Schedule X hereof any matters set out in Schedule III that may be contrary to or in conflict with other conditions hereof shall apply in preference to any such other contrary or conflicting conditions excepting the matters set out in Schedule X.

INSURANCE &
OTHER
REQUIRE-
MENTS

- 8 Without limiting the effect of the necessity of the Lessee to fully comply with Clauses 1.13 [Lawful Requirements] and 1.25 [Insurance Council Requirements] that:

- 8.1 If the lessee carries out any deep frying, kebab cooking, chicken rotisserie, wok cooking or any other cooking at the premises then the lessee at its own expense must have and maintain the following fire risk reduction measures:
- 8.1.1 kitchen areas must have six (6) monthly serviced fire extinguishers and wall mounted fire blankets where such space (if any) is being used for that purpose;
- 8.1.2 deep fryers must be thermostatically controlled;
- 8.1.3 exhaust flues must be cleaned at least annually and canopies or cooking hoods must be installed over all deep frying and wok cooking areas and must be cleaned at least six (6) monthly by a professional cleaning contractor;

8.1.4 filters must be cleaned at least fortnightly.

8.2 The lessee at its own expense regardless of whether the lessee carries out any cooking at the premises must have and maintain the following fire risk reduction measures:

- 8.2.1 the necessary fire extinguishers at the premises are to be clearly labelled, accessible and serviced six (6) monthly;
- 8.2.2 there is to be clear access to all emergency safety equipment at the premises at all times;
- 8.2.3 the premises is to be left in a tidy condition at the close of each business day and all debris is disposed of or placed in an appropriate container for future disposal;
- 8.2.4 where required by law, Australian Standards or regulation of any government body, flammables are to be stored in an approved storage cabinet when not in use.
- 8.2.5 the lessee is to fully comply with any other requirements of the relevant insurance policy.

CAR PARKING SPACES

- 9.1 In consideration of the payment of the rent and the prompt and due observance and performance by the lessee of the terms and conditions hereinafter appearing the lessor HEREBY GRANTS to the lessee and any employee of the lessee for the term of this lease the sole right and privilege to park passenger motor vehicles in car parking spaces ("Parking Spaces") identified on the plan attached to this lease.
- 9.2 The lessor hereby grants to the Lessee full licence and authority during the continuance of this lease to park and leave motor vehicles in the Parking Spaces together with all necessary rights (in common with all other persons authorised by the lessor) of ingress to and egress from the Land for the said motor vehicles and for the drivers thereof subject to the several covenants terms and conditions contained in this clause.
- 9.3 The licence hereby created shall determine upon the expiration or prior determination for any reason whatsoever of the term of this lease.
- 9.4 The lessee shall:
 - 10.4.1 observe and perform all the covenants terms conditions agreements rules regulations and provisos on the lessee's part as lessee to be observed and performed under and by virtue of this lease;
 - 10.4.2 comply with all reasonable directions rules and regulations of the lessor regarding the Parking Spaces;
 - 10.4.3 not cause or permit any obstruction whatsoever to the free ingress to or egress from the Land.
- 9.5 The lessee acknowledges that the rights hereby conferred by this clause shall rest in contract only and shall not create in or confer upon the lessee any tenancy or any estate or interest in or over the Land or the Parking Spaces and that the rights of the lessee under this clause shall be those of a licensee only and do not comprise or include any further or other rights.

RIGHT TO 10. PURCHASE

- 10.1 Subject to clause 10.6 at all times, if at any time during the Term of this lease (but not during any holding over) the lessor is desirous of selling the premises as a whole or a portion, or the land ("**Sale Land**") other than by auction open to the public or to Terramoll Holdings Pty Ltd then in consideration of the lessee's covenants contained in this lease the lessor shall give the lessee the first right of refusal to purchase the Sale Land subject to the following terms and conditions:
 - 10.1.1 the lessor shall give to the lessee notice in writing of the lessor's intention to sell and such notice shall constitute an offer to sell ("**Notice**") and therein the terms conditions and covenants upon which the Lessor offers to sell the Sale Land to the Lessee including:

- (i) the offer price which will not take into account the value of any improvements renovations or alterations made by the lessee to the premises; and
- (ii) the settlement terms which shall be 30 days from acceptance of the offer unless otherwise set out in the Notice

AND otherwise shall not constitute the imposition of any more onerous terms conditions covenants and duties upon the lessee or require the lessee to pay any greater pecuniary sum than that which the lessor would impose or require from a purchaser other than the lessee;

10.1.2 such offer shall remain open for acceptance by the lessee for a period of 14 days from the date of the Notice ("**Acceptance Period**");

10.1.3 if before the expiration of Acceptance Period the lessee communicates to the lessor its acceptance of the offer to sell there shall then be deemed a binding agreement to buy and sell between the lessor and the lessee who shall thereafter complete the agreement for sale and purchase thereby constituted in accordance with the terms conditions and covenants thereof which shall include:

- (i) that the Lessee pay a deposit of 10% of the purchase price within 24 hours of acceptance of the offer; and
- (ii) the balance of the purchase price shall be paid at settlement which shall take place not more than 30 days from the date acceptance except where a longer period is provided for in clause 10.1.1(ii); and
- (ii) that the Sale Land shall be at the risk of the lessee as and from the date of acceptance;

AND otherwise the sale and purchase shall be upon similar terms to those contained in the contract for sale and purchase for use by members of The Law Society of South Australia.

10.2 Until the expiration of the said period of 14 days the lessor shall not be at liberty to sell transfer convey or otherwise dispose of the Sale Land (or any interest therein) otherwise than in accordance with the right of first refusal hereinbefore given unless prior thereto the lessee has notified the lessor of its rejection or non-acceptance of the offer to sell.

10.3 If at the expiration of the said period of 14 days:

- 10.3.1 the lessee has notified the lessor in writing of its rejection of the lessor's offer to sell; or
- 10.3.2 there has been no notification to the lessor either to accept or reject the offer to sell

THEN the lessor shall thereafter be at liberty to sell transfer convey or otherwise dispose of or deal with the Premises as a whole or any interest therein upon such terms and conditions as the lessor shall think fit PROVIDED HOWEVER that the lessor shall not thereafter during the Term transfer convey or otherwise dispose of the Sale Land (or any interest therein) on any terms conditions or covenants which are or of which any one or more is or are more favourable to the purchaser or at a price less than the pecuniary consideration specified in the lessor's offer to sell given to the lessee without first reoffering to sell the relevant land to the lessee upon such other or varied terms or conditions.

10.4 An offer to sell required to be made under this clause shall be sufficiently made and delivered if in the manner prescribed in this Lease for the service of notices.

10.5 Time shall be of the essence for the purposes of this clause and the obligations thereunder.

10.6 The lessee acknowledges that the Land is subject to a first right to Terramoll Holdings Pty Ltd ("**Terramoll**") and that where the Land is sold to Terramoll prior to the expiration of the lease then the clause regarding the above right to purchase is not enlivened.

SCHEDULE**SCHEDULE I**

Clause 1.2 – Permitted Use of Premises.

Administration offices, machinery and wine storage and workshop and the retail sale of wine and for such other uses as are agreed by the parties from time to time, acting reasonably.

SCHEDULE II

Clause 3.6 – Minimum Rental Percentage Increase.

See Special Condition S1

SCHEDULE III

Clause 6 – Clauses Not Applying to This Lease.

Clause 2.3 (ii)

SCHEDULE IV

Clause 1.9 – Painting

See Item 8A of Schedule X on page 24

SCHEDULE V

Clause 1.16 – Lessee's Proportional Share.

38% being 2313 square meters of premises/ 6108 square meters of total net lettable area

SCHEDULE VI

Clause 2.2 Rates and Taxes.

There is a gross rental and therefor the lessee is not responsible for rates and taxes other than for any excess water reasonably determined by the lessor.

SCHEDULE VII

Clause 2.8 – Default Interest.

Interest will be at a rate equal to 2% above the prime lending rate charged by the National Australia Bank at the time of default on overdrafts of \$100,000.00.

SCHEDULE VIII

Clause 2.20 – Renewal.

A first right of renewal for a further TWO (2) YEARS ("First term of renewal"); and

A second right of renewal for a further ONE (1) YEAR ("Second term of renewal").

SCHEDULE IX

Clause 1.6 – Lessor's Plant and Equipment.

Evaporative and Reverse Cycle Air-conditioning noting that one of the two systems operating in the Premises has been installed for approximately 15 years.

SCHEDULE X

Clause 2.22 – special conditions.

S1. RENTAL

- 1A. Annual rental reviews of this Lease shall be the rental for the previous year plus CPI increase
- 1B. The CPI increase will be determined using the CPI method set out in Clause 3.4 hereof.
- 1C. All Rental (inclusive of GST) throughout the term (or any renewal) shall be paid calendar monthly in advance on a 7-day account basis [see Item 8F of this Schedule].
- 1D. The lessee shall be responsible to make payment of all running expenses of the premises including but not limited to electricity, telephone, gas [if any] and any additional water usage used and consumed by the lessee in the Premises. The lessor will provide reasonable evidence of any calculations of the lessee's proportion where the running expenses are not separately metered.

S2. FURTHER RENTAL PROVISIONS

The lessee if required by the lessor shall make payment of rental by direct debit to the lessor's nominated bank account and for this purpose the lessee agrees to sign such further documentation as required by the lessor.

S3. INSURANCE

- 3A. The lessee shall be responsible for public liability insurance in the sum of \$20,000,000.00 in accordance with Clause 1.19;
- 3B. The Lessor shall be responsible for building Insurance in accordance with Clause 1.20;
- 3C. The lessee shall be responsible for plate glass insurance (if any) in accordance with Clause 1.20;
- 3D. The lessee shall be responsible for its own contents insurance.

S5. FEES AND MORTGAGE CONSENT

5A. The lessor and the lessee agree to make payment of one half each of the lessor's solicitors costs of preparation of the lease and of and incidental to the same. If the lessee does not require a registered Lease the sum payable by the lessee on or prior to it entering into this Lease is \$770.00 made up as follows:

- | | | |
|---|------------------------|----------|
| • | Half Lease Costs | \$650.00 |
| • | Half Disbursements | \$ 50.00 |
| • | Goods and Services Tax | \$ 70.00 |

5B. If the lessee requires a registered lease costs of registration will be borne equally by the lessor and the lessee.

5C. If either the lessee or the lessor request mortgagee consent in writing the expenses of mortgage consent shall be borne equally by the lessor and the lessee.

S6. LESSORS WORKS

Not Applicable.

S7. LESSEE'S WORKS

All improvements and other fit out works required by the lessee shall be subject to

- 7A. the written consent beforehand of the lessor and carried out in all things at the expense of the lessee and
- 7B. local council consent (if required).

S8. OTHER MATTERS

8A. The lessee is;

- (a) required to make good/remove any lessee's works at the expiry of this Lease in all things at the expense of the lessee,
- (b) only required to paint the internal administrative area of the premises at the end of this Lease if reasonably required by the lessor with it being a requirement of the lessor that the lessee keeps the

premises in no lesser condition than they are at the commencement of this Lease. The parties acknowledge that the obligation to paint is limited to the administrative areas on the premises.

8B. It shall be the responsibility of the lessee:

- (a) to comply at the lessee's expense with all health and safety requirements relating to the premises; and
- (b) to obtain such consent which may be required from local council or other relevant authorities in respect to the permitted use.

8C. All of the lessee's external signage shall be subject to council consent (if required) and approval of the lessor.

8D. The following is agreed in respect to the monthly rental payments:

- (a) the monthly rental payments shall be made by the lessee monthly in advance on a 7-day account basis calculated from the 1st day of each calendar month so that rental for the month of May is payable by 7th May.

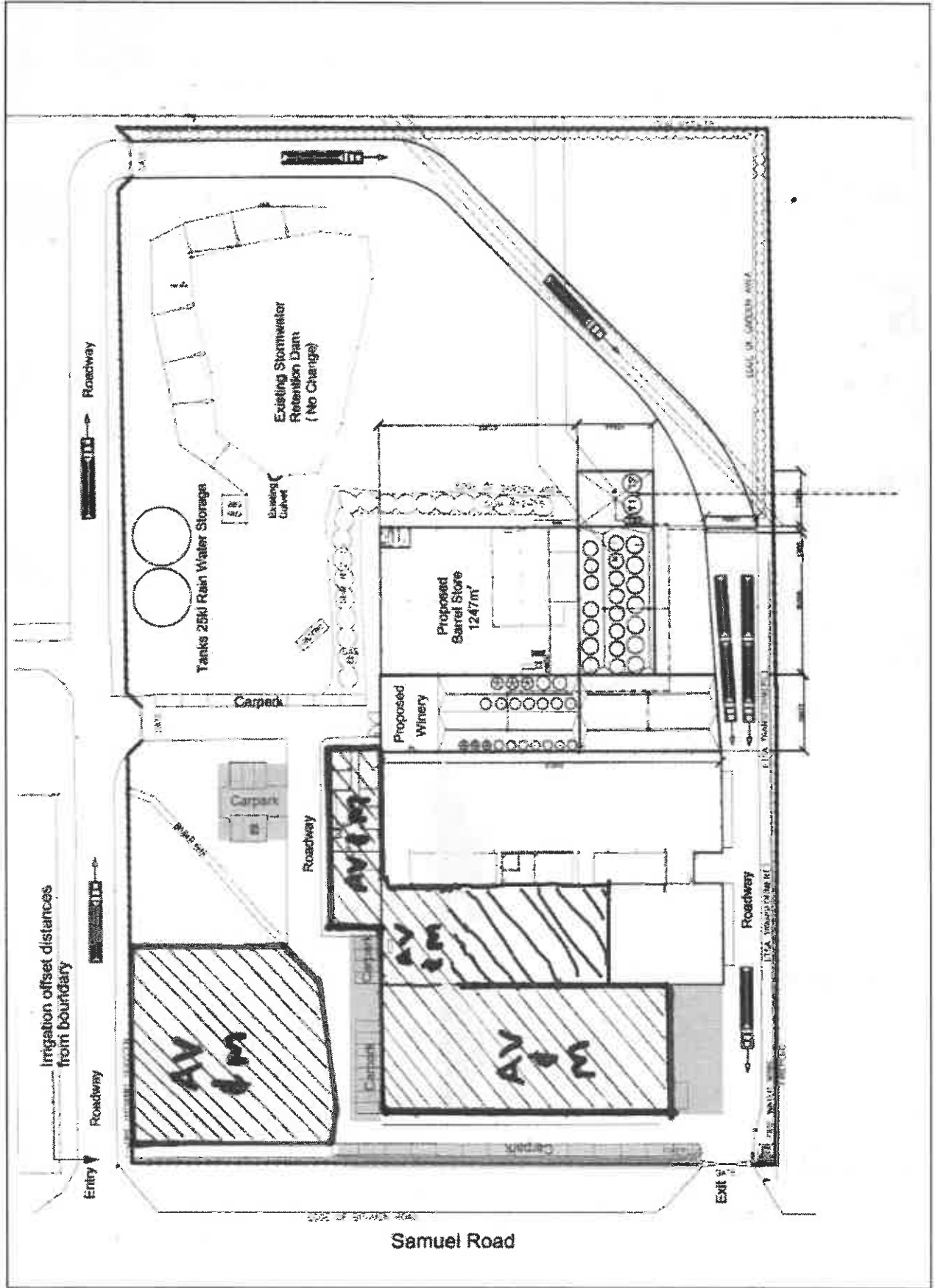
SCHEDULE XI Guarantors.

Not Applicable

SCHEDULE XII Security Bond.

Not Applicable

ANNEXURE A



■ CAR PARKING SPACES

GUARANTEE AND INDEMNITY

Not Applicable.


CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This lease does not contravene Section 32 of the Development Act 1993

DATED..... 1/7/2022

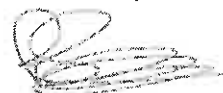

EXECUTION BY LESSOR

EXECUTED by MANCAVE HOLDINGS PTY LTD
In accordance with Section 127(1) of the
Corporations Act by the authority of it's directors:

.....
 Director
.....
Director/Secretary

EXECUTION BY LESSEE

EXECUTED by ADVANCED VITICULTURE AND MANAGEMENT PTY LTD
In accordance with Section 127(1) of the
Corporations Act by the authority of its directors:


.....
Director

.....
Director/Secretary

LANDS TITLES REGISTRATION
OFFICE
SOUTH AUSTRALIA

MEMORANDUM OF LEASE

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE &
STAMP DUTY PURPOSES ONLY**

| |
|------------|
| Prefix |
| L |
| Series No. |
| |

BELOW THIS LINE FOR AGENT USE ONLY

| |
|---|
| <p>CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886</p> <hr/> <p>Solicitor/Registered Conveyancer/Applicant</p> |
|---|

AGENT CODE

Lodged by:

Correction to:

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

- 1
- 2
- 3
- 4

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

- 1
- 2
- 3
- 4

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE
UNDERMENTIONED AGENT(S)

| ITEM(S) | AGENT CODE |
|---------|------------|
| | |
| | |
| | |
| | |

| | |
|--|--------|
| CORRECTION | PASSED |
| <p>REGISTERED</p> <p>REGISTRAR-GENERAL</p> | |